

## EXHIBIT 2

### DONATION AGREEMENT

This Donation Agreement (this “Agreement”) is entered into as of the date attested to by the City Clerk below, by and between HARTLEY NATURE CENTER CORPORATION, a Minnesota corporation (“Donor”) and the CITY OF DULUTH, a municipal corporation and political subdivision under the laws of the State of Minnesota (“City”). City and Donor are sometimes collectively referred to in this Agreement as the “Parties”.

#### RECITALS

WHEREAS, Donor owns certain real property in St. Louis County, Minnesota, legally described on the deed attached as Exhibit A, together with any and all improvements located thereon and all privileges, rights, easements appurtenant thereto (the “Property”).

WHEREAS, upon completion of certain conditions precedent, Donor wishes to donate the Property to City and City wishes to accept the donation, and the Parties wish to specify the terms and conditions of the donation.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, City and Donor agree as follows:

1. Donation of Property. Donor will gift to City the Property by donation on the terms and conditions set forth in this Agreement. City shall not be obligated to accept the deed to the Property if the City Council fails to approve this transaction or if City does not approve of the title or condition of the Property. Donor shall deliver possession of the Property on the date of Closing (defined below).

2. Disclosures to Donor. This donation is **voluntary**. If Donor does not wish to donate the Property to City, City will not acquire the Property. City will not use the power of eminent domain to acquire the Property.

3. Tax Consequences. Donor understands and acknowledges that City makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Donor will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.

4. Closing. The closing (the “Closing”) shall occur as soon as possible following the City Council’s formal approval of this transaction (the “Approval”), and in no event later than December 15, 2019. At Closing, Donor shall deliver to City (i) a Quitclaim Deed (the “Deed”) in substantially the form attached as Exhibit A transferring good and marketable fee simple title to the Property from Donor to City; (ii) a duly-adopted resolution of the Donor’s Board of Directors approving this Agreement and delivery of the Deed; and (iii) all other documents necessary to complete the transaction contemplated by this Agreement. City may terminate this Agreement prior to Closing by delivery of written notice to Donor within 60 days of this Agreement if the City Council fails to approve this transaction or if City does not approve of the title or condition of the Property. In such event, this Agreement shall automatically terminate upon delivery of City’s written notice and the Parties shall be relieved from any further obligations pursuant to this Agreement.

5. Fees. Donor shall be responsible to pay all real estate taxes for the Property for the year 2019 based upon the latest available tax statement (including all penalties and interest) and for all prior years. Donor will be responsible for the payment of the cost of recording the Deed and the City Council resolution, any real estate transfer tax or conveyance fees, and any other costs and expenses required to effectuate the transfer contemplated by this Agreement. At Closing, Donor will deposit funds with City in an amount necessary to cover the real estate taxes and costs Donor is responsible for under this Agreement. Donor shall be responsible for the following estimated costs associated with the transfer of Property:

\$ 0.00	2019 and prior years taxes
\$ 132.00	Recording fees (two documents on two Torrens Certificates)
<u>\$ 1.65</u>	Deed tax
<u>\$ 133.65</u>	Total

6. Title. City shall conduct its own due diligence in relation to the condition of title to the Property. Donor shall convey marketable title to the Property to City subject only to the following title exceptions:

- (i) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (ii) Building and zoning laws, ordinances, state and federal regulations;
- (iii) Any other matters consented to by City in writing.

7. Right to Inspect Property. City may require and/or conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property. City and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the Property for the purpose of performing such due diligence. If City determines, in its sole discretion, that the physical or environmental condition of the Property is unacceptable to City, City may elect to terminate this Agreement in which case City shall have no obligation to accept title to the Property.

8. Donor Representations. Donor represents the following:

a. Authorization. Donor has the full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. The individual(s) executing this Agreement on behalf of Donor have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Donor, and to bind Donor thereto. No consent or authorization from any other person, entity or government agency is required for Donor to enter into and perform Donor's obligations under this Agreement except as has already been obtained. The execution of the Agreement will not constitute a breach or default under any agreement to which Donor is bound and/or to which the Property is subject.

b. Title to Property. Donor has good and marketable title to the Property. Donor has no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by anyone other than Donor. Donor has no knowledge that anyone will, at the Closing, have any right to possession of the Property. There are no unsatisfied mechanics' or materialmen's lien rights on the Property. No assessment lien or judgment liens encumber the Property.

c. Legal/Other Proceedings. There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened litigation against the Donor which could affect Donor's title to the Property. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Donor or Donor's interest in the Property, nor are any such proceedings contemplated by Donor.

d. Condition of Property. To Donor's knowledge, the Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to the environmental conditions on, under, or about the Property, including but not limited to soil and groundwater conditions. There are no environmental hazards on, under, or about the Property, including but not limited to soil and groundwater conditions. Neither Donor nor any third party has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials. To the best of Donor's knowledge, methamphetamine production has not occurred on the Property. Donor does not know of any "wells" on the Property within the meaning of Minn. Stat. §103I. Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, Donor certifies that there is no "subsurface sewage treatment system" within the meaning of that statute on or serving the Property.

e. Foreign Entity. Donor is not a foreign person, foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.

Each of the above representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date of Closing and shall survive the Closing.

9. Additional Documents. Donor and City shall execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings.

11. No Merger. This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closing and shall not merge in any instrument conveying title to City. All representations, warranties, agreements, and obligations of the Parties shall survive the Closing.

12. Waiver. The failure of either Party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

13. Miscellaneous. There are no oral agreements that change this Agreement and no waiver of any of its terms shall be effective unless in a writing executed by the parties. Time is of the essence in all terms of this Agreement. This Agreement binds and benefits the parties and their successors in interest. This Agreement shall be construed under the laws of the state of Minnesota. This document may be executed in counterparts, which together shall be deemed an original for all purposes. If there is any loss or damage to the Property between the date of this Agreement and the date of Closing, the risk of loss

shall be on Donor. If the Property is destroyed or damaged prior to the Closing, City may cancel this Agreement upon written notice to Donor and in such event, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

14. Notices. Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City  
City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, MN 55806

Donor  
Hartley Nature Center Corporation  
Attn: Executive Director  
3001 Woodland Avenue  
Duluth, MN 55803

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

15. Dedication of Property as Park Property. Within 180 days of the Closing, City administration shall request that the City Council dedicate the Property as park property. In the event that the City Council fails to dedicate the Property as park property within 180 days of the Closing, City shall convey the Property back to Donor via a Quitclaim Deed in substantially the form of the Minnesota Uniform Conveyancing Blank and shall be responsible to pay for the recording fees and deed tax associated with recordation of the Quitclaim Deed. City's obligation to re-convey the Property will survive the Closing and delivery of the Deed.

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**HARTLEY NATURE CENTER  
CORPORATION**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

**CITY OF DULUTH**

By \_\_\_\_\_  
Its Mayor

Attest: \_\_\_\_\_  
Its City Clerk

Date Attested: \_\_\_\_\_, 2019

Countersigned:

By: \_\_\_\_\_  
Its Auditor

Approved as to form:

By: \_\_\_\_\_  
Its City Attorney

**EXHIBIT A**

**Deed to City of Duluth**

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**QUIT CLAIM DEED**

eCRV# N/A

DEED TAX DUE: \$1.65

Date: \_\_\_\_\_, 2019

FOR VALUABLE CONSIDERATION, HARTLEY NATURE CENTER CORPORATION, a Minnesota non-profit corporation under the laws of the State of Minnesota (“Grantor”), hereby conveys and quitclaims to CITY OF DULUTH, a municipal corporation and political subdivision under the laws of the State of Minnesota (“Grantee”), real property in St. Louis County, Minnesota, legally described and depicted on EXHIBIT A attached hereto.

*Check here if all or part of the described real property is Registered (Torrens)*

together with all hereditaments and appurtenances.

Subject also to the following restrictions, created by this deed and enforceable by Grantor:

Grantee, its successors and assigns, shall manage the real property under its Duluth Natural Areas Program (Article XXIX, Section 2, Duluth City Code), or any successor program with the mission of protecting real estate with special or unique ecological or environmental significance (a “Nature Program”). In the event Grantee or its successors and assigns ceases to manage the real property within a Nature Program, Grantee or its successors or assigns will convey the real property back to Grantor. This restriction may be amended or modified by the express written consent of Grantor and the then-owner of the real property. This restriction shall run with and burden the real property and shall be deemed a covenant that touches and concerns the real property and benefits Grantor.

*Check applicable box:*

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document.
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.
- The total consideration for this transfer of property is \$500 or less.

HARTLEY NATURE CENTER CORPORATION

By \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

State of Minnesota, County of St. Louis

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of HARTLEY NATURE CENTER CORPORATION, a nonprofit corporation under the laws of the State of Minnesota.

(seal)

\_\_\_\_\_  
*(signature of notarial officer)*

THIS INSTRUMENT WAS DRAFTED BY:

City of Duluth  
Office of the City Attorney  
411 W. First Street, Room 410  
Duluth, Minnesota 55802

TAX STATEMENTS FOR THE REAL PROPERTY  
DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:

City of Duluth  
411 W. First Street, Room 120  
Duluth, MN 55802



EXHIBIT A

Lots 1 through 15, Block 2; ALL of Block 3; ALL of Block 4; Lots 1 through 18, and 20 through 38, Block 6; ALL in FARRELL AND CULVER'S ADDITION TO KENWOOD.

EXCEPT all minerals. SUBJECT to mineral rights reserved by the State of Minnesota in Deed recorded in Book 1008 of Deeds, page 394, Book 1007 of Deeds, page 396, and to reservation of coal, oil, precious stones and mineral rights in deed recorded in Book 1014 of Deeds, page 569, Book 1052 of Deeds, page 91.

SUBJECT to mineral rights reserved by the State of Minnesota by deed filed for record in the office of the Registrar of Titles, as Document No. 260493, 260099 and 277751.

SUBJECT to the reservation of coal, oil, precious stones and mineral rights by J. C. Peterson in deed filed for record as Document No. 262818.

AND

ALL of RHODES DIVISION OF DULUTH.

EXCEPT coal, oil, precious stones and minerals.

SUBJECT to mineral rights reserved by the State of Minnesota by deed filed for record in the office of the Registrar of Titles, as Document Nos. 240478, 260493 and 277751.

AND

Lot 19, Block 6, FARRELL AND CULVER'S ADDITION TO KENWOOD.

EXCEPT minerals.

SUBJECT to such easements and servitudes as are incident to the reservation of the mineral estate by the State of Minnesota, effected by deed recorded in the office of the Registrar of Titles, as Document No. 206976.

AND

Lot 16, Block 2, FARRELL AND CULVER'S ADDITION TO KENWOOD.

All in St. Louis County, Minnesota